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**JUL 14 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Benigni, et al. :  
Application No. 10/805,724 : DECISION ON PETITION  
Filed: March 22, 2004 :  
Attorney Docket No. LD0283.DIV1 :  
:

This is a decision on the petition, filed June 15, 2004, requesting that the above-identified application be accorded a filing date of March 22, 2004.

Application papers in the above-identified application were filed on March 22, 2004. However, on June 7, 2004, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," stating that the application had not been accorded a filing date because the application was deposited without drawings.

The filing date of an application shall be the date on which the specification and any required drawings are received in the Patent and Trademark Office. 37 U.S.C. 111(a)(4). However, it is the practice of the Office to treat an application for a composition as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113. MPEP 601.01(f). Petitioner is advised that in a situation in which the appropriate examining group later determines that drawings are necessary under 35 U.S.C. 113, the filing date issue will be reconsidered by the PTO.

A review of the original application papers filed March 22, 2004 reveals that they involve an application for a composition. Thus, the application, containing a specification and at least

one claim, was complete within the meaning of 37 C.F.R. 1.53(b), and entitled to a filing date of March 22, 2004.

Accordingly, the petition is granted to the extent that the application will be accorded the March 22, 2004 filing date with no drawings as a part of the original disclosure of the application.

MPEP 601.01(f) also states that:

A nonprovisional application having at least one claim, ... directed to subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

And, MPEP 601.01(g) further provides that:

If the application is filed without all of the drawing figure(s) referred to in the specification, ..., OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers so deposited have been accorded a filing date, but are lacking some of the figures of the drawings described in the specification.

It is noted that the specification filed on March 22, 2004 describes drawings containing Figures 1 - 16, but no drawings were filed on March 22, 2004. Accordingly, it is concluded that the "Notice of Incomplete Application" mailed June 7, 2004, was mailed in error and is hereby withdrawn.

The preliminary amendment seeking entry of the drawings, submitted with the instant petition, will be considered by the examiner to determine if the drawings contain new matter.

Given the basis for granting this petition, no petition fee was required, and none has been charged.

This application is being forwarded to the Office of Initial Patent Examination for further processing, including mailing of a filing receipt, with a filings date of March 22, 2004 and for information on the file wrapper label that "0" sheets of drawings were present on filing. Applicant will receive appropriate notifications regarding any missing items or fees owed (if any), and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

*Patricia Faison Ball  
for*

Charles Pearson  
Director  
Office of Petitions